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Attorney for Plaintiff

5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 DIEGO M. GALIETTI, an individual,

8 Plaintiff,  
vs.

9 WESTERN PROGRESSIVE-NEVADA, INC.;  
10 CITIBANK, N.A., as Trustee of the American  
Home Mortgage Investment Trust 2004-3,  
11 Mortgage Backed Notes, Series 2004-3; and DOES  
12 I THROUGH X inclusive; and ROE  
13 CORPORATION XX through XXX, inclusive,  
Defendants.

Case No.: 2:21-cv-2034-APG BNW

14 **MOTION TO EXTEND TIME**

15 **(First Request)**

16 On May 24, 2022 and May 25, 2022, this Court granted two stipulations in docket nos. 43  
17 and 45 to extend time. In both stipulations, Wright, Finlay & Zak, LLP and Ramir M.  
18 Hernandez, Esq. made general appearances on behalf of defendant CITIBANK, N.A., as Trustee  
19 of the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series  
20 2004-3. Plaintiff believes this constitutes a waiver of service of process as the Amended  
21 Complaint and Summons were duly sent via the Court's electronic mailing system when they  
22 were filed and were sent via a separate electronic mailing to attorney Ramir M. Hernandez, Esq.  
23 on May 31, 2022. "A general appearance or responsive pleading by a defendant that fails to  
24 dispute personal jurisdiction will waive any defect in service or personal jurisdiction." *Benny v.*  
25  
26  
27

1           *Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (citations omitted), *amended on other grounds*, 807  
 2           F.2d 1514 (9th Cir. 1987).

3           Nevertheless, out of an abundance of caution, Plaintiff is filing this Motion to Extend  
 4           Time to Serve the summons and amended complaint for an additional 60 days<sup>1</sup>. Plaintiff  
 5           contacted counsel for defendants requesting a stipulation to extend time or to sign an acceptance  
 6           of service. Counsel for defendants stated that he did not have authority to do either.

7  
 8 FRCP 6(b) states:

9           (b) Extending Time:

10           (1) In General.

11           When an act may or must be done within a specified time, the court may, for good cause, extend  
 the time:

12           (A) With or without motion or notice if the court acts, or if a request is made, before the  
 original time or its extension expires; or

13           (B) On motion made after the time has expired if the party failed to act because of  
 excusable neglect.

14           The Ninth Circuit has held in Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1258-59  
 15           (9<sup>th</sup> Cir. 2010) that Fed. R. Civ. P. 6(b)(1) “ ‘[is] to be liberally construed to effectuate the  
 16           general purpose of seeing that cases are tried on the merits.’ *Rodgers v. Watt*, 722 F.2d 456, 459  
 17  
 18           (9th Cir.1983) (quoting *Staren v. American Nat'l Bank & Trust Co. of Chicago*, 529 F.2d 1257,  
 19           1263 (7th Cir.1976)); *see also* Fed.R.Civ.P. 1 (“[The Federal Rules] should be construed and  
 20           administered to secure the just, speedy, and inexpensive determination of every action and  
 21           proceeding.”). Consequently, requests for extensions of time made before the applicable deadline  
 22           has passed should “normally ... be granted in the absence of bad faith on the part of the party

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23  
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 25  
 26           <sup>1</sup> This Court ordered Plaintiff to serve defendant CitiBank, N.A. on or before 21 days after the filing of the  
 27           amended complaint. This Order was entered as docket no. 36.

1 seeking relief or prejudice to the adverse party.” 4B Charles Alan Wright & Arthur R.  
2 Miller, *Federal Practice and Procedure* § 1165 (3d ed. 2004).” Id.

3 In this case, given the general appearance by Defendant CITIBANK, N.A., as Trustee of  
4 the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3,  
5 Plaintiff believes that service of process has already been effectuated or waived by Defendant.  
6 Nevertheless, based on the above, Plaintiff believes that good cause exists to extend time to serve  
7 the Defendant CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust  
8 2004-3, Mortgage Backed Notes, Series 2004-3 via traditional means. Plaintiff requests 60 days  
9 to do so.

10 Dated this 31<sup>st</sup> day of May 2022.

11 /s/ Randal R. Leonard, Esq.  
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16 (702) 598-3667/ office  
Attorney for Plaintiff

17  
18 **ORDER**

19 For good cause shown, IT IS ORDERED that  
ECF No. 46 is GRANTED.

20 IT IS SO ORDERED  
21 DATED: 8:50 am, June 03, 2022

22   
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE

## **DECLARATION OF COUNSEL**

Comes now the undersigned counsel and states the following under penalty of perjury:

1. I am the counsel for the Plaintiff herein.
  2. In and around the 23<sup>rd</sup> and 24<sup>th</sup> of May 2022, I entered into two stipulations to extend time to answer the amended complaint filed herein and to file a supplemental brief as directed by this Court pursuant to an Order entered as docket no. 36.
  3. Counsel for Defendant Western Progressive Nevada, LLC stated that he and his firm was also representing CITIBANK, N.A., as Trustee of the American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3 (“CITIBANK”) as well and specifically included CITIBANK in the stipulation to extend time to answer the amended complaint and file a supplemental brief.
  4. My understanding was that CITIBANK wanted to appear and participate in the filing of the supplemental brief that was to be filed as well as participate in possible settlement negotiations.
  5. No mention was made regarding preserving the ability to object to jurisdiction or service of process as required by FRCP 12(h) and therefore these defenses should be waived.
  6. Further your declarant sayeth naught.

Dated this 31<sup>st</sup> day of May 2022.

/s/ Randal R. Leonard, Esq.  
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## **CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I certify that on this this 31<sup>st</sup> day of May 2022, I did cause a true copy of **MOTION TO EXTEND TIME** to be e-served through the Court's e-filing electronic notice system to the attorney(s) associated with this case.

## WRIGHT, FINLAY & ZAK, LLP

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Attorneys for Defendants

*Attorneys for Defendants  
the American Home M*

*The American Home Mortgage Investment Trust 2004-3, Mortgage Backed Notes, Series 2004-3*

/s/ Randal R. Leonard, Esq.

RANDAL R. LEONARD, ESQ.